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**In The
Supreme Court of the United States**

—::—
October Term, 1951

No. 94
—::—

AGAPITA GALLEGOS, PETITIONER,

V.

STATE OF NEBRASKA, RESPONDENT.
—::—

REPLY BRIEF FOR THE PETITIONER.
—::—

**JAMES G. MOTHERSEAD,
FLOYD E. WRIGHT,
ROBERT G. SIMMONS, JR.,
Counsel for Petitioner.**

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Counsel for Petitioner.**

**RESPONDENT ARGUES THAT IF PETITIONER'S
CONSTITUTIONAL ARGUMENT IS VALID, THAT
IT PUTS UNREASONABLE REQUIREMENTS UPON
POLICE OFFICERS. THESE REQUIREMENTS ARE
NOT UNREASONABLE WHEN THEY ARE AL-
READY REQUIRED BY LOCAL LAW.**

Respondent's argument that the failure to bring the
petitioner before a magistrate in Texas or Nebraska

earlier than twenty-five days is not an unlawful act, may be fairly summarized as follows:

A. It is unreasonable not to allow officers a reasonable time before preliminary hearing in the State where the crime is committed, to gather evidence and reach witnesses needed at the hearing. Twelve days is not unreasonable where witnesses might be needed from Texas (p.7,12,13, Respondent's brief).

B. It is unreasonable to require officers to take a prisoner before a magistrate in a state other than the one where the crime was committed where he cannot be charged (p.14, respondent's brief). To so require permits the accused to select the forum of preliminary hearing by merely fleeing (p.25, respondent's brief), which is unreasonable.

This reply brief is prepared to demonstrate that the local law of both Nebraska and Texas requires, in both instances, what respondent believes is unreasonable. Compliance with local law should not be an unreasonable constitutional requirement.

A. Respondent, page 7, Paragraph E, of his brief, argues that inasmuch as it was necessary to bring witnesses a thousand miles to testify at a preliminary hearing that an additional ten days of normal jail confinement does not seem too long or unreasonable. The respondent argues that to hold otherwise would be to read into the law a requirement that a person charged in one state must be given a hearing before a magistrate at a time and place when inadequate evidence can be presented. Respondent evidently believes this to be an unreasonable requirement.

In making the above argument, respondent overlooked Section 29-501, R. S. 1943, Nebraska, which, in offering protection to a prisoner, might have this result. This section permits the adjournment of the preliminary hearing in order to obtain evidence necessary at a preliminary hearing. The magistrate, however, by Section 29-501 cannot continue the hearing more than four days (see Appendix I). The effect of respondent's argument therefore is that the police or prosecutor should have greater authority in this respect than the law gives the magistrate.

Section 29-502, R. S. 1943 (Appendix II), permits the examining magistrate upon preliminary hearing, after any continuance as provided in Section 29-501, to release the prisoner on bail. The adjournment under those circumstances is limited to twenty (20) days. The respondent's argument that it is reasonable to hold prisoner until the evidence can be obtained before bringing him before the magistrate is in effect argument that it is reasonable for the officer to deprive the prisoner of the opportunity given by law of making bail during that continuance. The law contemplates that the court shall determine the length of the continuance, and the fixing of bond. Respondent argues that it is reasonable for the police to usurp the courts prerogative and make these decisions.

Another fallacy of respondent's argument in this connection is that in this particular case there was no attempt made to present any evidence at the preliminary hearing (R.9) and therefore no need for any such delay.

B. On page 14 respondent argues that it was not necessary to bring petitioner before a magistrate in Texas inasmuch as it could not help to bring him before a magistrate in a place where he could not be charged with a crime. On page 25 of the respondent's brief the respondent argues that the taking of the prisoner before a magistrate in Texas would give the criminal the privilege of selecting the state in which to have his preliminary hearing simply by fleeing. Respondent argues that that is an unreasonable result.

The argument of respondent is fallacious. Requiring what is required by local law is not an unreasonable result. The uniform criminal extradition act (Appendixes III, IV, V, VI), in effect in Nebraska and 34 other states provides that upon the affidavit of a person from another state that a crime has been committed that a warrant may be issued, the person be arrested and be brought before a magistrate and made to answer to the charge. If arrested without a warrant, he "must be taken before a judge or magistrate with all practical speed" and complaint made. This act provides for immediate hearing, proof of probable cause, and for release on bail. The Laws of Texas (Appendixes VII, VIII, and IX), although not the uniform criminal extradition act, require also that a fugitive arrested in Texas be brought before a magistrate. Upon hearing, the magistrate shall hear proof, and, if satisfied that the accused is the one charged with the offense named in the other state, the prisoner may be released on bail set by the magistrate. Respondent therefore in effect argues that it is reasonable

for the officers to decide whether the hearing shall be had, whether there is probable cause, and whether bail should be allowed. These matters are required to be passed upon by a court, not by irresponsible officers. Petitioner's position is not unreasonable when it results in requiring action already required by local law.

CONCLUSION.

This reply brief is prepared solely to call the court's attention to Sections 29-501, 29-502, 29-713, 29-715, 29-716, 29-720, R. S. 1943 (Nebraska) and Articles 999, 1000, 1001, of the Texas Code of Criminal Procedure, and their effect in reference to respondent's argument.

Respectfully submitted,

AGAPIA GALLEGOS,
Petitioner,

By JAMES G. MOTHERSEAD,
FLOYD E. WRIGHT,
ROBERT G. SIMMONS, JR.,
His Attorneys.

APPENDIX.

I. Section 29-501, R. S. 1943 (Nebraska), reads as follows:

"Examination before magistrate; adjournment; period; prisoner; how sustained and kept. If it shall become necessary for any just cause to adjourn the examination of any person brought before the magistrate as set forth in sections 29-401 to 29-414; it shall be lawful for such magistrate to adjourn such examination and commit such person, from time to time, for safekeeping to the jail of the county until the cause of delay is removed, and no longer; *Provided, the whole time of such confinement in the jail shall not exceed four days;* provided, further, the officer having in custody any such person may, by written order of the magistrate, detain such person in custody in some secure and convenient place other than the jail, to be designated by the magistrate in his order, not exceeding four days; and it shall be the duty of the officer, in whose custody any person shall be detained as above, to provide for the sustenance of such prisoner while in custody."

II. Section 29-502, R. S. 1943 (Nebraska), reads as follows:

"Examination before magistrate; adjournment; recognizance; period of continuance. When it shall become necessary to adjourn any trial according to the provisions of section 29-501, the person accused may enter into a recognizance before the magistrate, with good and sufficient security, to be approved by the magistrate, in such amount as he shall deem reasonable, conditioned for the appearance of such person before such magistrate, at a place and day and hour in the recognizance

specified; Provided, such adjournment shall not be for a longer time than *twenty days* without the consent of the accused; and provided, no person shall be let to bail who is charged with an offense not bailable under the Constitution of this state.

III. Section 29-713, R. S. 1943 (Nebraska), reads as follows: (UNIFORM CRIMINAL EXTRADITION ACT, SECTION 13):

"Whenever any person within this state shall be charged on the oath of any credible person, before any judge or other magistrate in this state with the commission of any crime in any other state and with having fled from justice; or whenever complaint shall have been made before any judge or other magistrate in this state, setting forth on the affidavit of any credible person in another state, that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and has fled therefrom and is believed to have been found in this state, the judge or magistrate shall issue a warrant directed to the sheriff of the county in which the oath or complaint is filed, directing him to apprehend the person charged, whenever he may be found in this state, and *bring him before the same or any other judge, court or magistrate, who may be convenient of access to the place where the arrest may be made to answer the charge or complaint and affidavit; and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.*"

IV. Section 29-714, R. S. 1943 (Nebraska), reads as follows: (Section 14, Uniform Criminal Extradition Act.):

"The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged with a crime punishable by death or life imprisonment in the courts of another state; but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath, setting forth the ground for the arrest as in section 29-713; and thereafter his answer shall be heard as if he had been arrested on a warrant."

V. Section 29-715, R. S. 1943 (Nebraska), reads as follows (Section 15, Uniform Criminal Extradition Act):

"If, from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and that he probably committed the crime, and, except in cases arising under section 29-706, that he has fled from justice, the judge or magistrate must commit him to jail, by a warrant, reciting the accusation, for such a time, specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in section 29-716, or until he shall be legally discharged."

VI. Section 29-716, R. S. 1943 (Nebraska), reads as follows (Section 16, Uniform Criminal Extradition Act):

"Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the

state in, which it was committed, the judge or magistrate must admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for the appearance of the prisoner before him at a time specified in such bond or undertaking, and for his surrender to be arrested upon the warrant of the Governor of this state."

VII. Article 999, Code of Criminal Procedure, State of Texas reads as follows:

"When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State or territory, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him."

VIII. Article 1000, Code of Criminal Procedure, State of Texas, reads as follows:

"The complaint shall be sufficient if it recites:

- "1. The name of the person accused.
- "2. The State or territory from which he has fled.
- "3. The offense committed by the accused.
- "4. That he has fled to this State from the State or territory where the offense was committed.
- "5. That the act alleged to have been committed by the accused is a violation of the penal law of the State or territory from which he fled."

IX. Article 1001, Code of Criminal Procedure, State of Texas, reads as follows:

"When the accused is brought before the magistrate, he shall hear proof, and if satisfied that

the accused is charged in another state or territory with the offense named in the complaint, he shall require of him bail with sufficient security in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State or territory from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days."